IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2073 OF 2005

Sanjiv G. Punalekar ..Petitioner.
Vs.
State of Maharashtra & Ors. ..
Respondents.

....

Mr. S.G. Punalekar, Petitioner appearing in person present.
Mr. R.M. Sawant, Government Pleader for Respondent No.1.
Mr. Krishna Tanna for Respondent No.2.
Mr. R.A. Dada, Senior Advocate with Mr. P.C. Ghandy instructed by M/s. Mulla & Mulla Craigie Blunt & Caroe for Respondent No.3.

....

CORAM : KSHITIJ R. VYAS, C.J. &
DR.D.Y.CHANDRACHUD, J.

8th March, 2006**.**

P.C. :

1. The Petitioner who is a practicing advocate enrolled with the Bar Council of Maharashtra and Goa has filed this Petition as a public interest litigation with a prayer to issue appropriate directions to Respondent No.2 i.e. the Maharashtra Electricity Regulation Commission to initiate a public enquiry envisaged under the Electricity Act, 2003 after giving public notice in prominent newspapers in the matter of the alleged negligence, default and deficiency on the part of Respondent No.3 - Reliance Energy

Limited, in fulfilling various obligations under the Distribution Licence and under the Act and to take action against Respondent No.3 as per law.

2. It is the contention of the Petitioner that MERC is required to act in public interest with regard to the cancellation of the licence of a distributor and for this purpose to conduct a public enquiry. The Petitioner submitted before the Court that he apprehends that MERC may hold that as a result of force majeure conditions in July 2005 due to the monsoon deluge, Respondent No.3 is exempted from the liability to compensate consumers. According to the Petitioner citizens are entitled to a newspaper notice of such hearing so that they can participate. It is submitted that MERC is not entitled to form an opinion as to whether Reliance Energy Limited is negligent unless MERC hears the consumers.

3. In our opinion, the Petition is required to be rejected on the short ground that proceedings are pending before MERC. Therefore, the Commission is seized of the matter. MERC has already passed an interim order dated 19th December, 2003. Besides, the learned counsel appearing for Respondent No.3

stated that the proceedings before MERC will not preclude any claim of consumers under Regulation 12. This statement, in our opinion, protects the interest of the Petitioner.

4. Further under the provisions of Section 94(3) of the Electricity Act, 2003, the appropriate Commission may authorize any person, as it deems fit, to represent the interest of the consumers in the proceedings before it. MERC by its order dated 19th December, 2003 authorized the following associations to represent the interest of the consumers in the proceedings before it:

1. Mumbai Grahak Panchayat,
   Grahak Bhavan,
   Sant Dnyaneshwar Marg,
   Behind Cooper Hospital,
   Vile Parle (West), Mumbai 400 056.

2. Prayas,
   Amrita Clinic, Athawale Corner,
   Lakdi Pool-Karve Road Junction,
   Deccan Gymkhana, Karve Road,
   Pune – 411 004.

3. Thane Belapur Industries Association,
   Plot No.P-14, MIDC,
   Rabale Village, Post Ghansoli,
   Navi Mumbai 400 071.

4. Vidarbha Industries Association,
   1st floor, Udyog Bhavan,
   Civil Lines,
   Nagpur – 440 001.

5. Similar provisions have been upheld by the Apex Court in **West Bengal Electricity Regulatory Commission v. C. E. S. C. Ltd.** (AIR 2002 SC 3588). In paragraph 43 of the judgment it is observed as under :

> "In Regulations 18, 19, 24, 25 and 31(4) the Commission has evolved a procedure by which it could restrict the number of representations as also the method to be followed in the proceedings before it which includes the restriction on hearing. Regulations 18 and 19 require the Commission to recognize such associations or other bodies of consumers which in its opinion, should be permitted to appear before the Commission. The said Regulations also empower the Commission to regulate the nature and extent of participation by such groups. Regulation 31(4)(ii) and (iii) also empower the Commission to control the proceedings before it. From the above Regulations, it is clear that the Commission has the necessary power to regulate the proceedings before it and the apprehension of the High Court that by granting such power the Commission may have to hear all the 17 lacs of consumers of Calcutta is wholly imaginary. That apart, on the facts of the instant case there is no such allegation that the Commission has in fact given indiscriminate hearing to the consumers. As a matter of fact, the respondent – company which was the appellant before the High Court has not even raised this issue and the High Court has suo motu gone into this issue. On the basis of the provisions found in the Regulations framed by the Commission, we are of the opinion that there is no room for any indiscriminate hearing before the Commission. Therefore the finding of the High Court that the Regulations do leave room for such indiscriminate hearing is erroneous."

In view of the above, we are of the view that there is no scope of

any indiscriminate hearing before the Commission. If any consumer approaches MERC under Regulation 12, Respondent 3 has stated through its counsel that the present proceeding will not conclude such claim. We accordingly dismiss this Petition.

CHIEF JUSTICE

DR.D.Y.CHANDRACHUD, J.